IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 547/2005
(Indrapuri Vs. State of Rajasthan & Anr.)

Date of Order : 14/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Ramesh Purohit for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Sandeep Mehta for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 17.10.2003 passed by Additional Chief Judicial Magistrate, Bhilwara (for short 'the trial court' hereinafter) whereby the trial court took the cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) and issued the process.

Heard learned counsel for the parties.

It is contended by learned counsel for the petitioner that the order impugned taking cognizance is absolutely non-application of the mind of the trial Judge to the extent that the

order itself shows that the complainant was not present in the Court and an application was moved on his behalf to dispense with the personal appearance which was dispensed with by the same order.

In the order, the trial court noticed that the statement of complainant has been recorded under Section 200 Cr.P.C. on 17.10.2003, whereas on 17.10.2003, the order sheet itself shows that the complainant was not present and his personal appearance was dispensed with on an application filed by his counsel. This clearly shows that the order impugned is absolutely without application of mind and therefore, bad in law. This fact has not been disputed by the learned counsel for the complainant. In the circumstances, therefore, the order impugned is liable to be set aside.

In the result, the petition is allowed. The order impugned dated 17.10.2003 passed by the trial court is set aside and the matter is remanded to the trial court to decide the matter afresh in accordance with law. Stay petition also stands disposed of.

(H.R.PANWAR),J.

rp